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Note on international protection

Addendum

Note on statelessness

Report of the High Commissioner

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I. Introduction

1. The Executive Committee has requested UNHCR to report regularly on its activities related to the Office's global statelessness mandate, as set out in relevant United Nations General Assembly resolutions. This Note covers the period since the last update provided to the Executive Committee in June 2009. It takes stock of the challenges involved, outlines the intensified efforts of the Office, and reviews the progress made. It also points to some major trends and significant developments. Furthermore, the Note looks at areas where additional action is required, and how the 50th anniversary of the 1961 Convention on the Reduction of Statelessness can be used to achieve concrete progress in terms of the prevention and reduction of statelessness, as well as the protection of stateless persons. Documents referred to in this Note can be found at www.refworld.org, unless otherwise indicated.

II. Background

2. The past two years have witnessed increased momentum in efforts to prevent and reduce statelessness. Yet, despite the growing global attention and a number of positive developments, these efforts did not necessarily lead to resolute action and change on the ground was often slow. Fifty years after the adoption of the 1961 Convention on the Reduction of Statelessness, up to 12 million people remain stateless and have yet to benefit from a solution to their not being able to acquire a nationality. The result was that affected populations continued to experience serious difficulties.

3. Statelessness is not merely a technical legal issue but one which requires good governance and political determination to overcome. Experience from the past two decades shows that statelessness can often be prevented if existing standards are adequately applied. For example, there is a universal obligation relating to the acquisition and deprivation of nationality, which stems from the prohibition of discrimination. Yet nationality laws frequently contain discriminatory provisions or are applied in a discriminatory manner. This has a particular impact on the sizeable number of the world's stateless persons who belong to ethnic, religious or linguistic minorities. Instances of previous arbitrary denial or deprivation of nationality resulting in statelessness have continued to have a major impact around the world: the children and grandchildren of those affected generally become stateless at birth, thereby perpetuating the problem.

4. The treatment of stateless persons is another area requiring decisive action. A number of States continue to refuse to allow stateless persons to return and reside on their territory, even when it is clear that previous generations were born and raised in these countries. A related problem is the detention of stateless persons, in particular those who are not allowed to return to their own countries and are subject to indefinite or repeated periods of detention because they are not granted any legal status in the country of stay. Such problems could be resolved through application of the 1954 Convention relating to the Status of Stateless Persons, and related human rights standards.

III. Progress and ongoing challenges

A. Impact of UNHCR's structural and management change process

5. The number of statelessness situations in which the Office undertook an operational response increased further, addressing areas highlighted by a number of Executive Committee Conclusions on statelessness, including No. 106 on the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons adopted

in 2006. UNHCR's structural and management change process has facilitated this work. The four pillar budget structure, the Global Strategic Priorities and the Results-based Framework embedded in the planning and reporting software *Focus* have permitted field offices to establish specific objectives and set budgets for activities relating to statelessness which are visible and separate from those for refugees and other persons of concern. This has ensured that the response to the statelessness problem is prioritized in relevant operations.

6. The progress achieved is evident from the number of UNHCR operations which set objectives relating to statelessness: from 28 operations which set objectives in 2009, the number rose to 51 in 2010, and 60 in 2011. This upward trend is also apparent in budgets and expenditure. In 2009, the last year before the four-pillar budget structure was introduced, global expenditure on statelessness was approximately USD 12 million. In 2010, the statelessness (pillar II) budget approved by the Executive Committee amounted to USD 38.5 million. Although fundraising efforts could not cover all of the needs identified, total expenditure was nonetheless USD 29.1 million, more than double the 2009 amount. The budget for 2011 has further increased, to USD 63 million.

7. As recognized in the High Commissioner's protection capacity initiative, UNHCR's ability to strengthen its global response to statelessness depends to a high degree on the capacity of staff and the ability to identify and involve effective partners. UNHCR's protection capacity initiative supports this by allowing for the creation of three dedicated regional statelessness posts in Asia, Europe, and the Middle East and North Africa regions. These posts will allow field offices to implement responses which are consistent with the objectives that have been set and the resources allotted.

B. Strengthening operational responses

8. UNHCR's stepped-up operational response to statelessness was also evident from the number of countries in which activities were undertaken to address the key gaps set out earlier. Indeed, there was an appreciable increase in such activities during the current two-year reporting period in relation to the previous report to the Standing Committee (even though the latter had covered a longer four-year period). When evaluating the impact of these activities, it should be borne in mind that the improvement of legal and administrative frameworks, accession and implementation of international treaties, and comprehensive efforts to resolve protracted statelessness situations, come to fruition only after concerted, long-term action by a range of actors.

(a) Improving baseline data on stateless populations

9. Baseline data on stateless populations gradually improved through cooperation with national authorities in undertaking population censuses and in conducting surveys of specific populations, and through careful analysis of existing documentation and academic studies. From 2009 to 2011, such activities were carried out in 42 countries. This work helped UNHCR increase coverage and improve the accuracy of the population data published in its annual statistical reporting. The Office reported population figures from 65 countries at the end of 2010, up from 60 in 2009 and 58 in 2008. On the other hand, UNHCR reported 3,463,840 stateless persons, a major drop in the overall figure reported in 2009, following clarification of the definition applied and a review of existing data in Thailand.

10. Additional efforts are needed to determine the magnitude of statelessness in a number of countries which are known to have large populations. Such gaps in baseline population data were a major impediment to establishing an effective response. With a view to further improving baseline population data, UNHCR organized a workshop in January 2011 for staff and selected partners on measuring statelessness. It examined various methodologies, including population censuses, surveys and the use of information

contained in administrative databases. The good practices identified during this workshop provided the basis for a draft guidance note for the Field on measuring stateless populations.

(b) Promoting accession

11. The promotion of accession to the Statelessness Conventions has been a key element in fulfilling UNHCR's mandate, and is also one of the Global Strategic Priorities. In this anniversary year, the Office has launched a campaign to promote accession to both the 1961 Convention and its companion treaty, the 1954 Convention. As part of this campaign, letters requesting States that are not party to consider accession have been sent by the Office to over 150 States. UNHCR has also published two brochures on *Protecting the Rights of Stateless Persons: The 1954 Convention relating to the Status of Stateless Persons*, and on *Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness*. These are available in all six official United Nations languages. The launch of this campaign has led to a significant increase in activity in the Field, principally through contacts with Governments to explore possible accession and studies of compatibility between national legislation and the two Conventions.

12. Although increased advocacy by UNHCR during the reporting period led to a number of States initiating accession procedures at the national level, it had not yet resulted in a major increase in the number of States parties. The number of States parties to the 1961 Convention rose from 35 to 38, with the addition of Hungary, Liechtenstein and Panama. The number of States parties to the 1954 Convention increased from 63 to 66, following accession by Liechtenstein, Malawi and Panama. This was a slightly lower rate of increase in the number of parties to both Conventions than during the period covered by the previous report. However, a number of States may be acceding on the occasion of the 50th anniversary of the 1961 Convention and accessions procedures had been initiated in seven States as of 15 May 2011.

(c) Promoting law reform and providing technical advice

13. Although the 1961 Convention on the Reduction of Statelessness has only 37 States parties, its tenets have had a significant impact even in non-party States. Many States that are not party to this Convention have incorporated its safeguards in their nationality laws. A UNHCR review of the nationality legislation of 120 such States shows that the majority have adopted some of the bedrock provisions of the Convention, such as granting nationality to foundlings (an infant who has been abandoned by its parents and discovered and cared for by others), and not removing or depriving a person of nationality on the grounds of residence abroad. There has also been a clear trend among non-party States, as well as States parties, to bring nationality legislation into line with international standards, such as the equal treatment of men and women with regard to the conferral of nationality on their children. Bangladesh, Kenya, Tunisia and Zimbabwe have all made amendments to allow women to confer nationality on their children.

14. At the same time, at least 40 of these States have not yet implemented a full safeguard against statelessness at birth in their nationality laws. Moreover, UNHCR has identified approximately 30 States with laws which discriminate against women with regard to conferral of nationality on their children.

15. Since the previous reporting period, there has been an increase from 35 to 56 in the number of States for which UNHCR has provided technical advice and promoted legal reforms to address gaps in nationality and related legislation. A number of States have reformed their nationality legislation to prevent statelessness. Georgia and Lithuania have closed loopholes which had previously allowed citizens to renounce or lose nationality even if they became stateless.

16. New legislation, amendments or changes in policies had the potential either to render millions of people stateless or, conversely, to resolve protracted situations. UNHCR worked extensively to raise awareness of relevant international standards. In Sudan for example, UNHCR advocated for citizenship arrangements to be put in place in preparation for the secession of Southern Sudan, in order to avoid statelessness, and provided technical advice on relevant legislation. In Nepal, UNHCR provided technical advice for the Constitutional reform, advocating for safeguards against statelessness and providing comments on a revised citizenship proposal.

(d) Preventing statelessness through documentation, birth registration and legal aid

17. UNHCR undertook operational responses to prevent statelessness through documentation, birth registration and legal aid in 25 countries. These responses included assisting people at risk of statelessness to acquire birth certificates and other vital identity documents needed to establish their nationality in Bosnia and Herzegovina, Croatia, Montenegro, Serbia and The former Yugoslav Republic of Macedonia.

18. The Office also worked on birth registration and civil documentation projects in the context of State succession in Sudan, as mentioned above, jointly with Plan International and the local authorities, including through information campaigns, community mobilization and mobile registration teams.

(e) Reducing statelessness

19. There has been no major breakthrough to end a protracted statelessness situation during the reporting period. While UNHCR does not have complete data on the number of stateless persons who have acquired or confirmed nationality, the information which is available shows continued steady progress in a number of States. These include reductions of over 235,000 persons in 2009 and 2010 in 28 countries, including in Iraq, Kazakhstan, Kyrgyzstan and the Russian Federation.

20. A three-year programme to allow for stateless former citizens of Indonesia to re-acquire nationality benefited over 110,000 people. A programme supported by UNHCR in Viet Nam led to the first series of naturalizations, benefiting some 2,360 people. In Central Asia, the Office supported the efforts of Kyrgyzstan to process the cases of people who had the right to acquire nationality through an innovative provision of the 2007 citizenship law. In Turkmenistan, UNHCR worked with the authorities on an ambitious programme to identify and register undocumented individuals, determine their nationality status, and naturalize those found to be stateless.

(f) Promoting determination procedures

21. In many States, recognition of statelessness is the entry point for gaining a status that includes residence and other rights. Yet procedures to determine statelessness exist in relatively few countries. UNHCR promoted the establishment of such procedures and provided technical advice in 39 States, a jump from the 20 States where such activities were undertaken in the previous period. There were a number of positive developments in Latin America: in Argentina, for example, the regulations governing migration now provide for temporary residence to be granted to stateless persons, while in Mexico a determination procedure was introduced into the instructions issued to all immigration officers.

(g) Developing international legal standards and doctrinal guidance

22. A key objective of UNHCR is to promote the development of international legal standards at the global and regional levels, which complement existing standards, in particular those set out in the 1954 and 1961 Conventions. During the reporting period, the Office also worked intensively on developing guidelines to help implement provisions of the two Conventions.

23. In the context of the 50th anniversary of the 1961 Convention, UNHCR launched a series of meetings¹ with governmental, United Nations, NGO and academic experts to explore key issues in the interpretation of the two Statelessness Conventions. The first two meetings focused on the definition of a stateless person (and the notion of *de facto* statelessness), determination procedures and status granted to stateless individuals under the 1954 Convention. The third meeting looked at safeguards to prevent statelessness among children under the 1961 Convention. Guidelines which take into account the conclusions of these meetings will be published in 2011 and 2012.

24. A joint seminar with the United Nations Committee on the Elimination of All Forms of Discrimination against Women in July 2009 served as a basis to explore a potential General Recommendation of the Committee on issues relating to forced displacement and the prevention of statelessness. In February 2011, UNHCR gave a similar briefing in partnership with the Open Society Justice Initiative to the Committee on the Rights of the Child (the body of independent experts that monitors implementation of the Convention on the Rights of the Child by its State parties), focusing on the prevention of statelessness and the obligation for States to ensure that every child has a right to acquire a nationality at birth. UNHCR contributed actively to the negotiation of resolutions in 2009 and 2010² on human rights and the arbitrary deprivation of nationality adopted by the United Nations Human Rights Council.³ The extensive input of the Office was also reflected in the Report of the Secretary-General on Human rights and arbitrary deprivation of nationality,⁴ a succinct restatement of international law in the area of nationality. At the regional level, a resolution on the *Prevention and Reduction of Statelessness and Protection of Stateless Persons in the Americas* was adopted by the General Assembly of the Organization of American States, in June 2010⁵. Following significant input from UNHCR, the Committee of Ministers of the Council of Europe adopted a *Recommendation on the Nationality of Children*⁶ which addresses a number of normative gaps at the regional level. The Office also worked with the African Commission on Human and People's Rights, and the Open Society Africa Governance Monitoring and Advocacy Project to explore the possible negotiation of an African Protocol on Nationality.

(h) Providing operational guidance and training

25. Guidance and training for staff focused in particular on the development of capacity to undertake operational responses. In May 2010, the Office issued updated guidelines to staff on the identification, prevention and reduction of statelessness and the protection of stateless persons: *UNHCR Action to Address Statelessness: A Strategy Note*. Given the utility of this Strategy Note for partners, it is available on UNHCR's website.

26. Over 130 staff and partners, including from other United Nations organizations, participated in regional Thematic Protection Learning Programmes on Statelessness in

¹ See United Nations High Commissioner for Refugees, *Expert Meeting - The Concept of Stateless Persons under International Law (Summary Conclusions)*, May 2010; *Expert Meeting - Statelessness Determination Procedures and the Status of Stateless Persons (Summary Conclusions)*, December 2010.

² UN Human Rights Council, Resolution 10/13, *Human rights and arbitrary deprivation of nationality*, 26 March 2009, and Resolution 13/2, *Human rights and arbitrary deprivation of nationality*, 14 April 2010

³ Ibid.

⁴ UN Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General (A/HCR/13/34)*, 14 December 2009

⁵ Organization of American States, *Prevention and Reduction of Statelessness and Protection of Stateless Persons in the Americas (AG/RES. 2599 (XL-O/10)* 8 June 2010

⁶ Council of Europe: Committee of Ministers, Recommendation CM/Rec (2009)13 of the Committee of Ministers to member states on the nationality of children (CM/Rec (2009)13), 9 December 2009

Africa, Asia and Europe. These programmes have been designed specifically to catalyze operational response and have contributed to an increased level of activity in these regions.

(i) Bolstering partnerships

27. The magnitude, complexity and impact of the statelessness problem globally required UNHCR to further expand the number and range of its partners. The Office worked with a growing number of NGOs on a range of issues, including the development of guidance on international standards, “mapping” statelessness situations, and awareness-raising. National civil society partners were also central to UNHCR efforts to address statelessness.

28. Coordination with other United Nations agencies is particularly important at the point of delivery. UNHCR worked closely with United Nations Country Teams in numerous countries as well as specific agencies, in particular the United Nations Children’s Fund, the Office of the United Nations High Commissioner for Human Rights and the United Nations Population Fund. At the global level, UNHCR coordinated with other agencies through the United Nations Rule of Law Coordination and Resource Group. One result of these efforts is a guidance note of the Secretary-General on the United Nations and Statelessness, which is to be issued shortly.

29. UNHCR worked with a number of international and regional organizations, in various *fora*, to raise awareness of and propose specific responses to statelessness. These included the Inter-Parliamentary Union, the African Union, the ASEAN Inter-Governmental Commission on Human Rights, the Council of Europe, the Organization of American States, the Organization for Security and Co-operation in Europe and the Söderköping Process in Europe.

(j) Raising awareness

30. With a view to increasing awareness of the causes and consequences of statelessness and of possible solutions, UNHCR organized a series of Regional Expert Meetings. These included a regional conference co-hosted by the Organization for Security and Co-operation in Europe held in Central Asia, which set in motion a series of efforts to reform legislation and to identify and resolve statelessness situations in the region. An expert meeting in South-East Asia organized with the Thailand National Human Rights Commission highlighted responses already undertaken in the region which could be replicated more widely. UNHCR co-organized an expert meeting in the Middle-East and North Africa region with the Office of the High Commissioner for Human Rights, which identified actions to be taken by United Nations agencies and other stakeholders to address statelessness and the human rights of stateless persons. These meetings were funded with the support of the European Union and brought together government representatives and experts, United Nations agencies and civil society to share information on successful responses and build momentum to address protection gaps and concerns in this area.⁷

31. The 2010 High Commissioner’s Dialogue on “Protection Gaps and Responses” highlighted the issue of statelessness issues and drew the active attention of participants from around the world. UNHCR organized photo exhibits on the theme of statelessness, during the Dialogue in Geneva, as well as in Kyiv, London and Nairobi. The number of web stories on statelessness on UNHCR’s web site increased to 19 during the two-year period, up from 18 during the preceding four years. The Office also launched translations of the UNHCR/Inter-Parliamentary Union Handbook on Nationality and Statelessness in 10 languages, bringing to 30 the total number of languages in which the Handbook is available.

⁷ See the outcome documents on the page dedicated to Regional Expert Meetings at www.unhcr.org

IV. Outlook

32. Progress will continue to be measured against UNHCR's Global Strategic Priorities. Areas which will require particular attention in the next biennium are as follows:

- *Strengthening the international legal framework:* The Office will continue to work with partners on promotion of accession to the two United Nations statelessness Conventions as well as on the development of guidelines on those standards and related human rights norms;
- *Prevention:* The Office will aim to provide technical advice to a greater number of States in order to ensure effective implementation of existing safeguards against statelessness through reform and the correct application of nationality laws. It will need to continue to monitor closely and take action on a range of situations in order to prevent increases in stateless populations due to inadequately drafted amendments to nationality laws, restrictive constitutional arrangements, and new instances of statelessness upon State succession. UNHCR will also consolidate partnerships to ensure birth registration for populations at risk.
- *Solutions for stateless populations:* The Office will continue to work on solutions for stateless persons through a two-pronged approach. First, it will expand information and legal aid programmes so that stateless individuals can benefit from existing nationality procedures, and also bolster State capacity to process such applications. Second, UNHCR will advocate for changes in law and policy so that stateless populations can acquire the nationality of a State with which they have close links, most commonly the State in which they were born and reside.
- *Protection of stateless individuals:* Closer attention will be paid to the situation of stateless persons identified in the context of mandate refugee status determination procedures, during detention monitoring, or when providing assistance to internally displaced persons who are stateless.
- *Advocacy:* UNHCR will build on progress achieved to date by using a range of media to highlight the human side of the problem, beginning with a media campaign in the second half of 2011. The Office will also work to disseminate examples of solutions which have already been adopted by Governments and which may serve as an example of best practices in other regions.

V. Conclusion

33. The past two years have witnessed significant progress in collective efforts to address statelessness. The number of States where UNHCR undertook activities relating to statelessness has risen significantly. There is far higher awareness and interest in the problem and an increasing number of actors involved. The 50th anniversary of the 1961 Convention offers a unique opportunity to build on the momentum achieved in recent years. In particular, the pledging process leading up to the December 2011 ministerial-level meeting of United Nations Member States offers an opportunity for wide-ranging dialogue with Governments on the concrete steps that are needed to tackle the causes and consequences of statelessness. The ministerial-level meeting will also provide a forum for the deposit of instruments of ratification and accession to the 1954 and 1961 Conventions.
